

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

Habeas Corpus Petition No.1564 of 2007

Ramaiah

.. Petitioner

Vs

1. The Secretary to Government
(Home), Prohibition and
Excise Department, Secretariat,
Chennai-600 009.
2. The Commissioner of Police,
Chennai Police, Egmore, Chennai. .. Respondents

Petition filed under Article 226 of the Constitution of India for
issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.R.Sekar
For Respondents: Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The petitioner, father of the detenu by name Doss, who was incarcerated at Central Prison, Chennai, by order dated 8.9.2007 of the second respondent under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a Goonda, seeks a writ of Habeas Corpus to call for the records in connection with the said order of detention made in BDFGISSV No.367/2007, to set aside the same and to direct the respondents to produce the detenu before this Court and set him at liberty.

2.1. The impugned order of detention came to be passed based on the ground case registered in T-5 Thiruverkadu Police Station Crime No.1258/2007 for offences under Sections 341, 332, 336, 427, 506(2) and 307 IPC, complaint of which was lodged by Bharanidharan, Sub-Inspector of Police. When the complainant was on rounds along with other police constables to secure the detenu, who is an absconding accused, found him near Kone Company and on seeing the police party, the detenu brandished his knife and picked up soda bottles and hurled the same against the police, which scattered on the road. In the melee, the complainant suffered injury on his right hand and the vehicular traffic was dislocated. Taking advantage of the panic situation, the detenu fled from the scene. During the course of investigation, the detenu was arrested and produced before Judicial Magistrate, Poonamallee, who remanded him to judicial custody.

2.2. On being satisfied that the detenu had acted in a manner prejudicial to the maintenance of public order, after taking into consideration the two adverse cases, one on the file of Thirumullaivoyal PS Cr.No.310/2003 for offences under Sections 341, 302 r/w 34 IPC and the other on the file of T-5 Thiruverkadu PS Cr.No.1251/2007 for offences under Sections 448 & 307 IPC, the impugned detention order was clamped on the detenu.

3. The learned counsel for the petitioner challenges the impugned order of detention on the ground of non application of mind on the part of the detaining authority, as the detaining authority had not taken note of the fact that the specific plea raised by the learned counsel for the detenu in his representation dated 9.10.2007 that the detenu was taken by the police on 2.8.2007 and was kept in the lock-up illegally till 9.8.2007 and not on 8.8.2007, as mentioned in the detention order, was not considered in the rejection order dated 23.10.2007.

4. We have perused the entire materials placed before us. Even though in the grounds of detention, it was stated that the detenu was arrested on 8.8.2007 with respect to the ground case, in the representation made by the petitioner dated 9.10.2007, he had specifically stated that the detenu was taken on 2.8.2007 by the Police and was kept under their custody and thereafter, a false case was foisted against him. However, the first respondent, while passing the order of rejection dated 23.10.2007 rejecting the representation of the learned counsel for the detenu dated 9.10.2007, had not considered the contention raised by the learned counsel as to the arrest of the detenu.

5. We are, therefore, satisfied that the detaining authority had not taken note of the above fact, which shows the non application of mind on the part of the detaining authority. Accordingly, the order of detention is vitiated and the same is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sra

To

1. The Secretary to Government (Home),
Prohibition & Excise Department
Secretariat, Chennai 9.
2. The Commissioner of Police,
Chennai Police, Egmore, Chennai.
3. The Superintendent
Central Prison, Puzhal, Chennai.
4. The Joint Secretary to Government,
Public (Law and Order) Department,
Fort St.George, Chennai -9.
5. The Public Prosecutor
High Court, Madras.

HCP No.1564 of 2007

RS(CO)
RVL 07.01.2008

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